

**BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS
OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

**IN THE MATTER OF:
RANDALL J. NEELEY**

Petitioner

Randall J. Neeley
For the Petitioner

Stephen Morris

Department of Housing and
Community Affairs

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Board of Appeals No. S-2766
(OZAH No. 10-16)

Report and Recommendation by: Lynn A. Robeson, Hearing Examiner
Hearing held by: Francoise M. Carrier and Martin L. Grossman, Hearing Examiners

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

In Petition No. S-2766, Randall J. Neeley, seeks approval of a Special Exception under Zoning Ordinance §59-G-2.00 to allow an accessory apartment on property located at 1900 Forest Glen Road, Silver Spring, Maryland. The legal description of the property is Lot 14, Block D, in the Northmont Subdivision, and is shown on Tax Map No. JP12.

On December 23, 2009, the Board issued a notice of a public hearing before the Hearing Examiner for May 6, 2010. Exhibit 11(a).

Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC), in its report dated April 23, 2009 (Exhibit 12), recommended approval of the Petition, with six (6) conditions.¹ Pursuant to Section 59-A-4.128 of the Code, the Planning Board did not review this special exception. Exhibit 12, p. 2.

The hearing went forward as scheduled on May 6, 2010; however, the hearing was rescheduled to permit additional time for the Department of Housing and Community Affairs (“DHCA”) to inspect the property and prepare its report. Tr. (5/6/10), p. 2.² On Mar 24, 2010, this office issued a new notice of public hearing for October 4, 2010.

The DHCA inspected the property on May 20, 2010. Housing Code Inspector Stephen Morris reported his findings in a memorandum dated May 24, 2010 (Exhibit 13). The inspector concluded that occupancy must be limited to a family of three or two unrelated persons, in habitable space of 655 square feet.

The October 4th hearing proceeded as scheduled. No opposition appeared at the hearing. At the public hearing, the Hearing Examiner requested a copy of the deed to the

¹ The Technical Staff Report, Exhibit 15, is frequently quoted and paraphrased herein.

² This transcript citation is to the public hearing held on May 6, 2010. All further transcript citations will be to the transcript of the October 4, 2010, public hearing.

property and the record was held open until October 16, 2010, to permit the Petitioner to file the deed. T 20. No deed was submitted and the record closed on October 16, 2010.

For the reasons set forth below, the Hearing Examiner recommends approval of the Special Exception petition, subject to the conditions set forth in Section V of this report.

II. FACTUAL BACKGROUND

A. The Subject Property and its Current Use

The subject property is located at 1900 Forest Glen Road, Silver Spring, Maryland, on the south side of Forest Glen Road at the southwest corner of its intersection with Woodland Drive approximately 150 feet east of Georgia Avenue. It is in the R-60 Zone. The property is approximately 2,700 feet west of Holy Cross Hospital and butts Montgomery Hills Baptist Church to the west. Exhibit 12, p. 5. It contains a total of 0.17



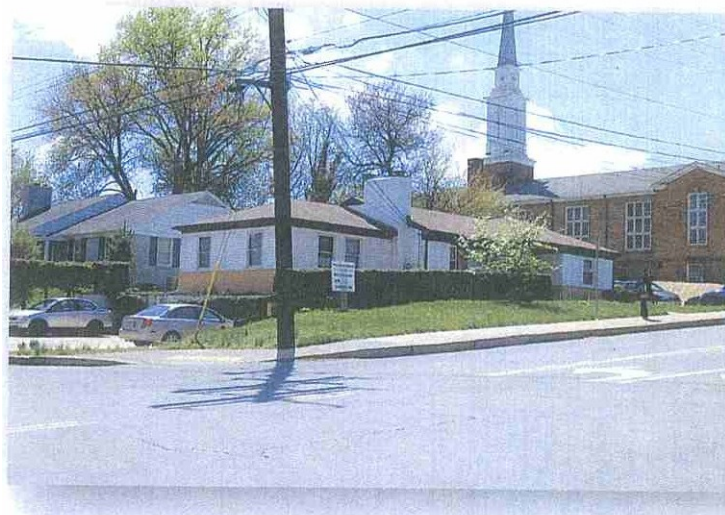
acres, and is zoned R-60. A locational map included in the Technical Staff Report, shown above.

The property is improved with a single story home as shown below, with the main entrance on Forest Glen Road:



View from Forest Glen Road

The property abuts Montgomery Hills Baptist Church to the west, a three-story medical building across Forest Glen Road to the north, and a single family dwelling to the south (below).



View from Intersection of Woodland Drive and Forest Glen Road

B. The Surrounding Neighborhood

Technical Staff advises that the property abuts Montgomery Hills Baptist Church to the west. The church property extends the full length of the block fronting Georgia Avenue between Forest Glen Road to the north and the I-495 interchange to the south. A single-family dwelling abuts the property immediately to the south. Across Woodland Drive, facing the property from the east, is another single family dwelling. All abutting properties are within the R-60 Zone. Exhibit 12, p. 6. Technical Staff identified the neighborhood as the area bounded by Georgia Avenue to the east, Forest Grove Drive to the West, Myrtle Road to the north and the I-495 interchange to the south. Exhibit 12, p. 6.

DHCA reports that there were two accessory apartments and three Registered Living Units in the direct vicinity of the property, but all are now defunct. Exhibit 13; Tr. 17.

The Hearing Examiner agrees that the area delineated by Staff constitutes the neighborhood affected by the special exception. As noted by Technical Staff, the uses within the delineated area consist primarily of single-family detached homes with commercial and institutional uses along Georgia Avenue that are also zoned R-60. Exhibit 12, p. 6.

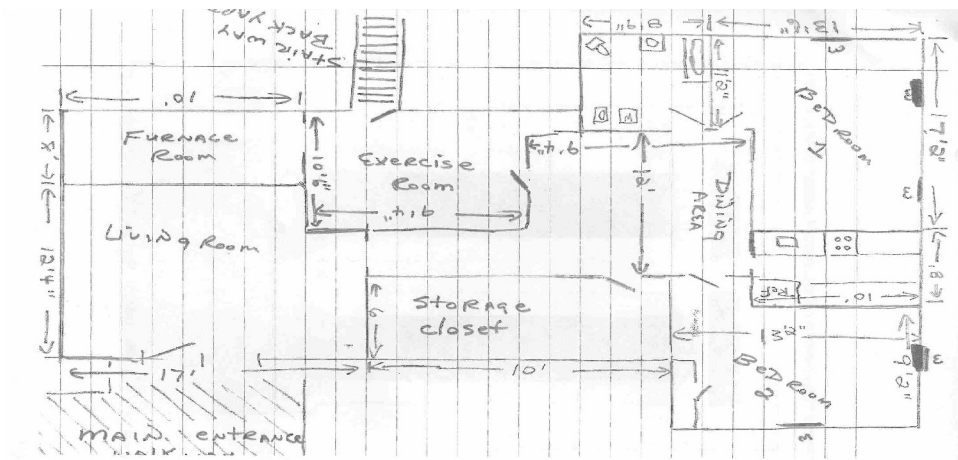
C. The Master Plan

The subject property lies within the “Forest Glen East” area of the 1996 Forest Glen Sector Plan. Exhibit 8. This area is delineated by Georgia Avenue on the west, Medical Park Drive and Everest Street on the north, Sligo Creek Park and the Beltway to the south. Plan, p. 15. Technical Staff advises that the Sector Plan contains no specific recommendations

relevant to this particular property. Exhibit 12, p. 6. The Plan's goal for the area is to strengthen and stabilize quiet, single-family neighborhoods like that identified by Technical Staff for this special exception request. The Plan also reaffirms the R-60 zoning for the neighborhood, under which accessory apartments are a permitted special exception use. Plan, p. 20. The Hearing Examiner finds that the special exception requested does not change the appearance of the property as a single-family dwelling, is consistent with the R-60 zoning in the neighborhood and therefore is consistent with the Sector Plan.

D. The Proposed Use

The petition proposes an accessory apartment in the basement of Petitioner's existing single story detached home. Technical Staff advises the apartment occupies 1,100 out of a



Floor Plan

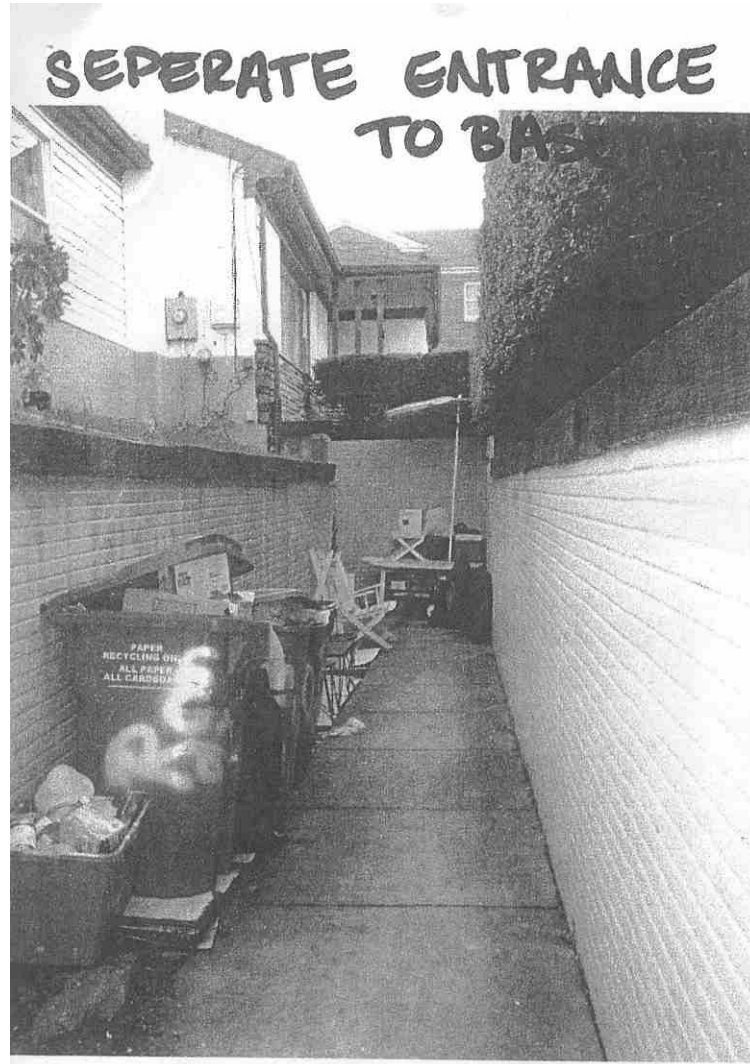
total of 2,900 square feet of floor area. Exhibit 12, p. 5. DHCA reports that the apartment contains 655 square feet of habitable area. Exhibit 13. The habitable space includes a kitchen and dining area, two bedrooms and a bathroom, as shown on the Floor Plan (above).

The property contains two off-street parking areas, one accessed from Woodland Drive and one from Forest Glen Drive. The Woodland Road parking area may accommodate four (4) cars and sits below grade of the main entrance. The Forest Glen parking area may accommodate three (3) cars and sits at grade with Forest Glen Road. Tr. 13. A picture of the tenant parking area is shown below:



Tenant Parking Area

Access to the apartment is by a walkway from the Woodland Drive parking area to the rear of the dwelling, shown on page 8. The walkway and apartment entrance are illuminated with four (4) existing 100-watt motion sensor lights. Exhibit 12, p. 8; Tr. 14.



DHCA inspected the property on May 20, 2010. Housing Code Inspector Stephen Morris reported his findings in a memorandum dated May 24, 2010 (Exhibit 13). Necessary corrections included:

4. The Petitioner must install legal egress windows and window wells in the two bedrooms in the proposed accessory apartment and must obtain permits and a final inspection before occupancy.

* * *

5. The following exterior violations exist and must be corrected, peeling paint on trim, missing siding and unregistered and dysfunctional motor vehicles.
6. The petitioner lives in the main floor unit with his girlfriend, his son and with three unrelated occupants. The cellar unit is currently occupied by

the owner's girlfriend's daughter and her infant child. It is unclear concerning the occupancy and rental agreements.

Mr. Morris noted that the total habitable area of the accessory apartment is approximately 655 square feet. Based on that fact, he concluded that it may be occupied by no more than 2 unrelated persons or a family not to exceed 3 persons.

Based on this record, the Hearing Examiner finds that the proposed special exception will not cause non-inherent adverse effects on the neighborhood warranting denial of the petition, provided Petitioner complies with the conditions set forth in Section V, below.

E. Traffic Impacts

Technical Staff advises that the requested special exception will generate a single additional peak hour trip for the both uses on the property for a total of two peak hour trips. Exhibit 12. Due to the small scale of the proposed use, the Hearing Examiner has no basis in this record to disagree with the finding of Technical Staff and therefore agrees that the accessory apartment meets the requirements of Local Area Transportation Review ("LATR"). Similarly, the Hearing Examiner also finds that the proposed accessory apartment generates fewer than four (4) trips and therefore is not subject to Policy Area Mobility Review ("PAMR").

F. Environmental Impacts

Petitioner does not propose any external changes to the site (with the exception of enlarging the window wells for the bedrooms). Technical Staff advises that the property is exempt from the Forest Conservation Law. Based on this evidence, the Hearing Examiner finds that Petitioner's request will have no adverse environmental impacts.

G. Community Response

There was no community response to the special exception request.

III. SUMMARY OF THE HEARING

Petitioner testified at the public hearing in support of the petition. Mr. Stephen Morris, a DHCA inspector, also testified as to compliance with the Housing Code.

A. Petitioner's Case

Mr. Randall Neeley:

Mr. Randall Neeley, owner of the property, testified that the basement apartment previously existed as a doctor's office under a prior owner. Tr. 11. He identified the photographs and plans marked into evidence and stated that they fairly and accurately represented existing conditions on the property. He agreed with the findings and analysis of the Technical Staff report and agreed to adopt that as part of his testimony. Tr. 5. Mr. Neeley agreed to accept the six (6) conditions listed in the report. Mr. Neeley also agreed to make all repairs and correct all conditions listed in the DHCA inspector's report (Exhibit 13). Tr. 16-17.

He further testified that the property can accommodate parking for seven cars on the property, one in the upper (Forest Glen) lot and four in the lower (Woodland Road) lot. Tr. The entrance to the property will be lit by four 100-watt motion sensor lights which are residential in nature. Tr. 14-15. He stated that all repairs cited in the DHCA inspector's report (Exhibit 13), including enlarging the window well, had been completed with the exception of replacement of missing siding. Tr. 17.

B. Public Agency Testimony

Housing Code Inspector Stephen Morris:

Mr. Stephen Morris testified that his Memorandum dated May 24, 2010, accurately described his findings regarding the special exception request. Tr. 16. The habitable area of the apartment consisted of 655 square feet, limiting the occupancy to a family of three or two unrelated individuals. Tr. 16. He confirmed that all accessory apartments and Registered Living Units in the area were non-operational. He asked that, prior to occupancy, all unrelated individuals living in the main unit be given notice to vacate. Tr. 19.

III. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards and conditions are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioner will have satisfied all the requirements to obtain the special exception, if she complies with the recommended conditions. Exhibit 15.

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code 59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioner complies with the recommended conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code Section 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code, Section 59-G-1.21. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an accessory apartment. Characteristics of the proposed accessory apartment that are consistent with the “necessarily associated” characteristics of accessory apartments will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with accessory apartments, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff lists the following inherent characteristics of accessory apartments (Exhibit 12, p. 9):

- (1) The existence of the apartment as a separate entity from the main living unit;
- (2) The provision within the apartment of the necessary facilities and floor area to qualify as a habitable space under the applicable Code provisions;
- (3) The provision of a separate entrance and walkway;
- (4) The provision of sufficient parking and lighting; and
- (5) The added activity from an additional household, including potential for additional noise from that additional household, and more noise.

The Hearing Examiner concludes that, in general, an accessory apartment has characteristics similar to a single-family residence, with only a modest increase in traffic, parking and noise that would be consistent with a larger family occupying a single-family residence. Thus, the inherent effects of an accessory apartment would include the fact that an additional resident (or residents) will be added to the neighborhood, with the concomitant possibility of an additional vehicle or two.

Technical Staff found “[t]he size, scale and scope of the proposed accessory apartment will not adversely affect the residential character of the neighborhood or result in any unacceptable noise, traffic disruption or environmental impacts.” Exhibit 13, p. 9. Thus Staff concluded that there are no non-inherent adverse effects arising from the accessory apartment sufficient to form a basis for denial.

As the accessory apartment is fully contained within the interior of the single-family home, will generate only one additional trip, contains a separate walkway and entrance illuminated with lighting characteristic of residential homes, and has ample off-street parking, the Hearing Examiner concludes that there are no non-inherent adverse effects of the requested use and there will be no adverse effects sufficient to warrant denial of the petition.

B. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioner's written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 59-G-1.21. General conditions.

§5-G-1.21(a) *-A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) Is a permissible special exception in the zone.

Conclusion: An accessory apartment is a permissible special exception in the R-60 Zone, pursuant to Code § 59-C-1.31.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.00 for an accessory apartment, as outlined in Part C, below.

(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special

exception must include specific findings as to master plan consistency.

Conclusion: The subject property is covered by the *1996 Forest Glen Sector Plan*. The Plan does not explicitly address the question of accessory apartments, but its stated goal is to strengthen and stabilize residential neighborhoods in Forest Glen East. The Plan also supports the R-60 zoning, which permits accessory apartments as special exceptions. Plan, p. 20. The Technical Staff concluded that the proposed accessory apartment would be consistent with the Master Plan. Exhibit 12, p. 6.

Moreover, because Petitioners plan no external structural modifications to the subject property, the requested special exception will maintain the residential character of the area. Thus, it is fair to say that the planned use, an accessory apartment in a single-family, detached home, is not inconsistent with the goals and objectives of the *1996 Forest Glen Sector Plan*.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses. The Board or Hearing Examiner must consider whether the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: The accessory apartment will be located in an existing dwelling and will not require any external changes. It therefore will maintain its residential character. There will be sufficient parking, considering the driveway space and

the availability of on-street parking, and traffic conditions will not be affected adversely, according to Transportation Planning Staff. There are only two other similar uses in the neighborhood (accessory apartments), and the addition of this use will not affect the area adversely. Based on these facts and the other evidence of record, the Hearing Examiner concludes, as did Technical Staff, that the proposed use will be in harmony with the general character of the neighborhood. Technical Staff indicates that the subject site will be adequately served by existing public facilities (Exhibit 13, p. 7), and the evidence supports this conclusion.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: For the reasons set forth in answer to the previous section of this report, the special exception will not be detrimental to the use, peaceful enjoyment, economic value, or development of the surrounding properties or the defined neighborhood, provided that the special exception is operated in compliance with the listed conditions of approval.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff found that the property “is illuminated with typical residential outdoor lighting. After review of the proposed lighting plan, staff finds that no direct light would intrude into any adjacent residential property.” Exhibit 13, p. 9. Since the use will be indoors and residential, it will cause no

objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site. The Hearing Examiner so finds.

(7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: As discussed above, the Hearing Examiner finds that the proposed special exception will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.

(8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

(9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: Technical Staff indicates that the subject site will be adequately served by existing public facilities (Exhibit 13, p. 7), and the evidence supports this conclusion.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception does not require approval of a preliminary plan of subdivision, the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (“LATR”) and Policy Area Mobility Review (PAMR). As indicated in Part II. E. of this report, Transportation Planning Staff did do such a review, and concluded that the proposed accessory apartment use would add one additional trip during each of the peak-hour weekday periods. Exhibit 12. Since the existing house, combined with the proposed accessory apartment, would generate fewer than 30 total trips in the weekday morning and evening peak hours, the requirements of the LATR are satisfied without a traffic study. Since the proposed use is estimated to generate only one additional peak-hour trip, PAMR is also satisfied. Therefore, the Transportation Staff concluded, as

does the Hearing Examiner, that the instant petition meets all the applicable Growth Policy standards.

- (C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Based on the evidence of record, especially given the amount of off-street parking on the property, the Hearing Examiner finds that the use will not cause a traffic hazard on the public roadways abutting the property and will not reduce the safety of vehicular or pedestrian traffic. Exhibit 13, p. 7.

C. Specific Standards

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 12), provide sufficient evidence that the specific standards required by Section 59-G-2.00 are satisfied in this case, as described below.

Sec. 59-G-2.00. Accessory apartment.

A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:

(a) Dwelling unit requirements:

- (1) *Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.*

Conclusion: Only one accessory apartment is proposed.

- (2) *The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already*

existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:

- (i) The lot is 2 acres or more in size; and*
- (ii) The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.*

Conclusion: The apartment is located in the basement of an existing house, and therefore shares a wall in common, as required for a lot of this size (under an acre).

- (3) An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.*

Conclusion: No new addition or extension of the main dwelling is proposed. The accessory apartment will be located in an existing dwelling.

- (4) The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.*

Conclusion: The house was built in 1953. Exhibit 12. It therefore meets the “5 year old” requirement.

- (5) The accessory apartment must not be located on a lot:*
 - (i) That is occupied by a family of unrelated persons; or*
 - (ii) Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or*
 - (iii) That contains any rental residential use other than an accessory dwelling in an agricultural zone.*

Conclusion: The use as proposed does not violate any of the provisions of this subsection; any unrelated individuals currently living in the main dwelling

will be required to vacate the premises prior to issuance of an occupancy certificate as a condition of approval.

- (6) *Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.*

Conclusion: Access to the accessory apartment is through a basement in the rear of the structure, on the lower level which is required for residential use. There will thus be no change to the residential appearance of the dwelling.

- (7) *All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.*

Conclusion: Petitioners are not proposing any new construction or modifications to the exterior of the dwelling, with the exception of enlarging the wells surrounding the basement windows, which does not affect the residential nature of the structure.

- (8) *The accessory apartment must have the same street address (house number) as the main dwelling.*

Conclusion: The accessory apartment will have the same address as the main dwelling.

- (9) *The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet.*

Conclusion: The accessory apartment is subordinate to the main dwelling and under 1,200 square feet, as it occupies approximately 1,100 square feet of space (only 655 square feet of which is habitable space) in Petitioner's existing 2,900 square-foot home. Exhibit 12, p. 5; Exhibit 13.

59-G § 2.00(b) Ownership Requirements

- (1) *The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary*

absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.

Conclusion: The Petitioners will live in the upper level of the dwelling.

- (2) *Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the Petitioner, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.*

Conclusion: According to the SDAT records, Petitioner purchased the home in 2002.

Exhibit 12. The one-year rule has therefore been satisfied.

- (3) *Under no circumstances, is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.*

Conclusion: The Petitioners will receive compensation for only one dwelling unit as a condition of the special exception.

- (4) *For purposes of this section owner means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the Board.*

Conclusion: While the best evidence supporting ownership is the deed itself, SDAT records are reasonably reliable and indicate that Petitioner is the owner of the property. No evidence appearing to the contrary, the Hearing Examiner finds that this standard has been met.

- (5) *The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.*

Conclusion: Not applicable.

59-G § 2.00(c) Land Use Requirements

- (1) *The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more*

than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.

Conclusion: The subject property consists of a single lot that is approximately 16,042 square feet in size, and therefore satisfies this requirement.

- (2) *An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use(see also section G-1.21 (a)(7) which concerns excessive concentration of special exceptions in general).*

Conclusion: As there are no operating accessory apartments or Registered Living Units in the neighborhood, the Hearing Examiner finds that the petition will not create an excessive concentration of similar uses.

- (3) *Adequate parking must be provided. There must be a minimum of 2 off-street parking spaces unless the Board makes either of the following findings:*
- (i) *More spaces are required to supplement on-street parking; or*
 - (ii) *Adequate on-street parking permits fewer off-street spaces.*
- Off-street parking spaces may be in a driveway but otherwise must not be located in the yard area between the front of the house and the street right-of-way line.*

Conclusion: Both Technical Staff and the Housing Inspector concluded that the two parking areas on-site may accommodate up to seven (7) cars. The Hearing Examiner finds, therefore, that the minimum requirement of two (2) spaces has been met.

D. Additional Applicable Standards

Not only must an accessory apartment comply with the zoning requirements as set forth in 59-G, it must also be approved for habitation by the Department of Housing and Community Affairs. As discussed in Part II. D. of this Report, the Housing Code Inspector's report (Exhibit 13) notes certain issues, and recommends that occupation of the accessory apartment be limited to no more than three family members or two unrelated persons. As mentioned above, Petitioners have agreed to meet all conditions, and will make the repairs required by the Housing Code Inspector.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that Petition No. S-2766, which seeks a special exception for an accessory apartment to be located at 1900 Forest Glen Road, Silver Spring, Maryland, be GRANTED, with the following conditions:

1. The Petitioner is bound by his testimony, representations and exhibits of record;
2. The Petitioner must make the repairs needed to comply with the conditions set forth in the Memorandum of Stephen Morris, Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 13):
 1. The Petitioner must install legal egress windows and window wells in the two bedrooms in the proposed accessory apartment and must obtain permits and a final inspection before occupancy.
 2. The following exterior repairs must be completed prior to occupancy:
 1. Repair peeling paint on trim;
 2. Repair missing siding; and
 3. Repair or remove all unregistered and dysfunctional motor vehicles;
3. Based on habitable space in the apartment (655 square feet), no more than three family members or two unrelated persons may reside in the accessory apartment;
4. Only related individuals may live in the main dwelling; prior to final inspection and occupancy, all unrelated individuals must vacate the main dwelling;

5. Petitioner must occupy one of the dwelling units on the lot on which the accessory apartment is located;
6. Petitioner must not receive compensation for the occupancy of more than one dwelling unit; and
7. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: November 9, 2010

Respectfully submitted,

Lynn A. Robeson
Hearing Examiner